

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William Rasenberger	Team: Squad #7	CCRB Case #: 202104948	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/17/2021 9:55 AM	Location of Incident: § 87(2)(b)	Precinct: 42	18 Mo. SOL 12/17/2022	EO SOL 12/17/2022	
Date/Time CV Reported Thu, 08/19/2021 10:01 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 08/19/2021 10:01 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM James Stalikas	18382	959268	WARRSEC
3. An officer			
4. DT3 Gary Capellan	00339	950154	WARRSEC
5. DT3 Joseph Spina	06037	953436	WARRSEC
6. SGT William Busch	01524	945537	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Steven Cruver	02950	950250	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Gary Capellan	Abuse: Detective Gary Cappellan threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
B.POM James Stalikas	Force: Police Officer James Stalikas struck § 87(2)(b)'s vehicle with a vehicle.	§ 87(2)(b)
C.SGT William Busch	Force: Sergeant William Busch used a non-lethal restraining device on § 87(2)(b)	§ 87(2)(b)
D.SGT William Busch	Abuse: Sergeant William Busch threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
E.DT3 Gary Capellan	Abuse: Detective Gary Capellan damaged § 87(2)(b)'s property.	§ 87(2)(b)
F.POM James Stalikas	Force: Police Officer James Stalikas used a non-lethal restraining device on § 87(2)(b)	§ 87(2)(b)
G. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)
H. An officer	Force: An officer used a non-lethal restraining device on § 87(2)(b)	§ 87(2)(b)
I.DT3 Gary Capellan	Discourtesy: Detective Gary Capellan spoke discourteously to § 87(2)(b)	§ 87(2)(b)
J.DT3 Joseph Spina	Force: Detective Joseph Spina used physical force against § 87(2)(b)	§ 87(2)(b)
K.DT3 Gary Capellan	Abuse: Detective Gary Capellan threatened § 87(2)(b) with the use of force.	§ 87(2)(b)

Case Summary

On August 19, 2021, the CCRB received the following complaint via the website from § 87(2)(b) a non-reporting witness, on behalf of her adult son, § 87(2)(b) [BR 1].

At about 9:55 a.m. on June 17, 2021, Sergeant William Busch, Police Officer James Stalikas, and Detectives Gary Capellan, Joseph Spina, and Steven Cruver, all assigned to Bronx Warrants, attempted to stop § 87(2)(b) who was wanted for a recent shooting and other offenses, as he drove down Forrest Avenue in the Bronx. The officers used two minivans to enclose § 87(2)(b)'s vehicle. Momentarily, he came to a stop. As Detective Capellan proceeded to approach § 87(2)(b)'s vehicle, along with Sgt. Busch, he pointed his taser at § 87(2)(b)'s driver's side window [Allegation A: Abuse of Authority – Threat of Force, § 87(2)(g)]. It's alleged that PO Stalikas rammed his minivan into § 87(2)(b)'s vehicle [Allegation B: Force – Vehicle, § 87(2)(g)] but this is uncorroborated. In fact, § 87(2)(b) rammed both police vehicles, as he tried to escape the officers. To stop him, Sgt. Busch reached through § 87(2)(b)'s passenger window, and deployed his taser against him [Allegation C: Force – Nonlethal Restraining Device (Taser), § 87(2)(g)] -- but § 87(2)(b) was able to break one of the wires or otherwise rendered the taser ineffective. He then rolled up his passenger window, trapping Sgt. Busch's arm between the top of the window and the frame. Allegedly, Sgt. Busch told § 87(2)(b) "I am going to kill you" [Allegation D: Abuse of Authority – Threat of Force, § 87(2)(g)]. Detective Gary Capellan tried to open the driver's side doors to § 87(2)(b)'s vehicle, but they were locked. He used a sledgehammer to break § 87(2)(b)'s rear driver's side window [Allegation E: Abuse of Authority – Property Damaged, § 87(2)(g)]. Detective Capellan and PO Stalikas then each saw § 87(2)(b) reaching for a firearm on the floor behind the passenger seat. Through the broken window, PO Stalikas fired his taser into § 87(2)(b)'s back [Allegation F: Force – Nonlethal Restraining Device (taser), § 87(2)(g)] temporarily incapacitating him. PO Stalikas and Detective Capellan removed § 87(2)(b) from the vehicle and handcuffed him on the roadway. Attracted by the yelling and the sound of vehicles colliding, § 87(2)(b)'s half-brother, § 87(2)(b) left his (and § 87(2)(b)'s) apartment inside of § 87(2)(b) and approached the scene of the arrest. Allegedly, he saw two officers kneeling on § 87(2)(b)'s back [Allegation G: Force – Physical Force, § 87(2)(g)] and an officer using his taser against § 87(2)(b) in drive-stun mode [Allegation H: Force – Nonlethal Restraining Device, § 87(2)(g)]. Video evidence shows that Detective Capellan yelled "get the fuck out of here" twice, apparently addressing § 87(2)(b) [Allegation I: Discourtesy – Word, § 87(2)(g)]. Detective Spina yelled at § 87(2)(b) to stay back, but he continued to approach, coming within about twenty feet of the officers. Detective Spina walked up to § 87(2)(b) and pushed him from the edge of the roadway onto the sidewalk [Allegation J: Force – Physical Force, § 87(2)(g)]. § 87(2)(b) remained on the sidewalk but walked closer to the scene of the arrest, until he was alongside Detective Capellan, whom he told "suck my dick." The detective momentarily pointed his taser at § 87(2)(b) and threatened "I am going to tase you" [Allegation K: Abuse of Authority Threat of Force, § 87(2)(g)]. § 87(2)(b) was charged with multiple offenses, including reckless endangerment for ramming the officers' vehicles. He has been in federal custody since his arrest. § 87(2)(b) and the investigator each attempted on multiple occasions to reach § 87(2)(b)'s defense attorney, to discuss the possibility of § 87(2)(b) providing a statement. However, § 87(2)(b) did not answer, or return, any calls. To avoid putting § 87(2)(b) in (further) legal jeopardy, the decision was made to not interview § 87(2)(b).

The investigation is in possession of a cellphone video and CCTV footage that capture the incident [BR 2 and 3].

Findings and Recommendations

Allegation A: Abuse of Authority – Detective Gary Capellan threatened § 87(2)(b) with the use of force.

Allegation B: Abuse of Authority – Police Officer James Stalikas struck § 87(2)(b)s vehicle with a vehicle.

Allegation C: Force – Sergeant William Busch used a non-lethal restraining device (taser) against § 87(2)(b)

Allegation D: Abuse of Authority – Sergeant William Busch threatened § 87(2)(b) with the use of force.

Allegation E: Abuse of Authority – Detective Gary Capellan damaged § 87(2)(b)s property.

Allegation F: Force – Police Officer James Stalikas used a non-lethal restraining device (taser) against § 87(2)(b)

Police documents show that § 87(2)(b) was wanted for numerous I-Cards [BR 4] at the time of his arrest. PO Stalikas began investigating § 87(2)(b) around June 2, 2021, when § 87(2)(b) was identified as the perpetrator of a shooting on May 29. (No one was shot.) PO Stalikas testified during his CCRB interview [BR 5], that, according to his intelligence, § 87(2)(b) was armed and dangerous, and known to be in constant possession of a firearm. § 87(2)(b)s arrest history [BR 6] includes multiple weapons-related offenses, and multiple charges of assault against a police officer. Furthermore, PO Stalikas's DD5s [BR 7], i.e. recorded investigative actions, mention a certain semi-automatic handgun that § 87(2)(b) was known to carry. Officer Stalikas first attempted to apprehend § 87(2)(b) on June 14, 2021. § 87(2)(b) fled in his vehicle at a high rate of speed, according to a DD5, and PO Stalikas did not give chase, because there were many school children and other pedestrians in the area. Sgt. Busch, PO Stalikas's supervisor, became involved in PO Stalikas's investigation about a week prior to June 17. The sergeant stated during his CCRB interview [BR 8] that he learned of § 87(2)(b)s violent criminal history, including assaults against police officers, and was aware that § 87(2)(b) carried a semi-automatic firearm.

At about 6:00 a.m. on June 17, 2021, Officer Stalikas, Sgt. Busch and Detective Capellan parked nearby § 87(2)(b) in the Bronx, where § 87(2)(b) resides with his mother. Detectives Cruver and Spina arrived in another vehicle and parked further south, near the intersection with East 166th Street. PO Stalikas saw that § 87(2)(b)s vehicle, which he had allegedly used in the May 29th shooting, was parked outside of § 87(2)(b). Although PO Stalikas did not know it, § 87(2)(b) was inside of the vehicle as, according to PO Stalikas, the officers waited for § 87(2)(b) to exit § 87(2)(b). At about 9:55 a.m., a ConEdison worker knocked on the heavily-tinted driver's side window of § 87(2)(b)s vehicle. He apparently asked § 87(2)(b) to leave his parking space. § 87(2)(b) pulled out and began driving south, toward East 166th Street. Over the radio, Sgt. Busch told Detectives Spina and Cruver to block the road. As seen between 00:18 and 00:30 in CCTV footage [BR 3], the detectives maneuvered their vehicle to cut § 87(2)(b) off. § 87(2)(b) who was in his bedroom inside § 87(2)(b) testified that he heard vehicles colliding, followed by voices yelling. He couldn't discern what any of the voices were saying except for one officer yelling "I'm going to kill you." (This was the officer who first approached § 87(2)(b)s vehicle on the passenger side, § 87(2)(b) told his mother, § 87(2)(b) after the incident. As discussed below, § 87(2)(b) was likely referring to Sgt. Busch.) § 87(2)(b) looked outside of his bedroom window and saw officers running toward § 87(2)(b)s vehicle. He then watched as an unmarked black minivan drove into the rear of § 87(2)(b)s vehicle, accelerating just before the collision.

Sgt. Busch, Detective Capellan, and PO Stalikas all denied that their police vehicle, the black minivan, rammed § 87(2)(b)s vehicle. The CCTV video mentioned above, at 00:38,

shows Sgt. Busch exit from the passenger side, and Detective Capellan from the driver's side, of the minivan. § 87(2)(b) drives forward, and PO Stalikas, the operator, follows him. Detective Capellan points his taser ahead as he approaches the driver's side of § 87(2)(b)'s vehicle. At 00:40, Sgt. Busch opens the passenger side door of § 87(2)(b)'s vehicle, which is still in motion, but § 87(2)(b) accelerates forward, towards Detective Spina and Detective Cruver's minivan, which is out of frame. PO Stalikas briefly accelerates, then applies the vehicle's brakes — the brake lights are activated at ~ 00:44 — and comes to a stop. He testified that he was trying to get as close as possible to § 87(2)(b)'s vehicle. He stopped just behind the vehicle and did not make any contact with it.

Sgt. Busch stated that, after opening § 87(2)(b)'s door, he told him to stop his vehicle and exit. § 87(2)(b) drove forward, however. He struck Detective Spina and Detective Cruver's vehicle, and nearly struck Detective Cruver, who had just exited his vehicle. Detective Cruver was forced to "jump out of the way" of § 87(2)(b)'s vehicle, Detective Capellan testified during his CCRB interview [BR 9]. Sgt. Busch, who had his taser drawn, again ordered § 87(2)(b) to put the vehicle in park and exit — but § 87(2)(b) reversed and rammed into the vehicle PO Stalikas was still inside of. This is apparently seen at 00:48, when the black minivan abruptly lurches backward. § 87(2)(b) then put the vehicle back into drive. Sgt. Busch reached through the passenger's window of § 87(2)(b)'s vehicle, yelled "taser" multiple times, then deployed his taser in prongs mode. § 87(2)(b) broke one of the wires, however, or otherwise rendered the taser ineffective. PO Stalikas estimated that up to this point, § 87(2)(b) had rammed into each police vehicle at least three times.

After defeating the taser, Sgt. Busch stated, § 87(2)(b) reached into the backseat of his vehicle, and, simultaneously, rolled up his passenger window. Unable to react, Sgt. Busch's arm became trapped between the top of the window and the doorframe. (This is all consistent with the Threat, Resistance, and Injury report [BR 10] regarding the incident.) Sgt. Busch was unable to free his arm from the window and became afraid that § 87(2)(b) could drag him and kill him. Believing his life was in imminent danger, the sergeant communicated to his partners that his arm was stuck. He denied telling § 87(2)(b) "I am going to kill you," though he stated that, in his opinion, lethal force would have been justified against § 87(2)(b) at least when he began reaching toward the backseat. PO Stalikas and Detective Capellan did not recall any officer threatening to kill § 87(2)(b).

Sgt. Busch did not explicitly state that he was dragged by § 87(2)(b)'s vehicle after his arm became stuck. Detective Capellan testified, though, that § 87(2)(b)'s vehicle dragged Sgt. Busch a few feet. He emphasized that Sgt. Busch was not able to "sidestep" or move with the vehicle; he was being pulled by the car. The windows on the driver's side of the vehicle were fully rolled up and tinted to the point of opacity. Detective Capellan tried to open each door on the driver's side, so that he could stop § 87(2)(b) from continuing to drive. He was unable to because the doors were locked, and because the vehicle continued to move. Seeing that Detective Capellan could not open the doors, and that Sgt. Busch's arm was trapped, PO Stalikas took a sledgehammer from his vehicle and handed it to Detective Capellan, who then used it to shatter § 87(2)(b)'s rear driver-side window. PO Stalikas approached the broken window and saw § 87(2)(b) sliding into the rear of the vehicle and reaching toward a handgun on the floor behind the front passenger seat. Detective Capellan's testimony was mostly consistent, but differed in some details. After Sgt. Busch tased § 87(2)(b) the detective stated that § 87(2)(b) stopped driving. He then leaned backwards and reached toward the handgun.

As § 87(2)(b) was trying to grab the gun, his hand coming within inches of it, PO Stalikas fired his taser into § 87(2)(b)'s back, incapacitating him. "This was right before he grabbed the gun," according to Detective Capellan. PO Stalikas and Det. Capellan were then able to take § 87(2)(b) out of the vehicle and onto the roadway. Detective Capellan stated that § 87(2)(b) did not resist, and that the officers had no problems taking him into custody. According to PO Stalikas, § 87(2)(b) braced his arms and tensed his body to avoid being handcuffed.

Nonetheless, the officers were able to handcuff § 87(2)(b) within about five seconds.

Under Patrol Guide procedure 221-08, a conducted electrical weapon (CEW) can be an effective means of subduing aggressive suspects. CEWs are meant to augment and provide a greater margin of safety for MOS who might otherwise be forced to physically subdue a dangerous subject. A CEW should be used only against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring persons present. Prior to using a CEW, officers must consider the nature and severity of the crime/circumstances, actions taken by the subject, duration of the action, immediacy of the perceived harm to members of the service or bystanders, whether the subject is actively resisting custody or attempting to evade arrest by flight, the subject's violent history, and other factors. CEWs should *generally* not be used against subjects operating or riding any vehicle where the subject may fall while it is in motion. NYPD Patrol Guide procedure 221.08 [BR 11].

Video shows that Detective Capellan pointed his taser at § 87(2)(b)'s vehicle as he approached it. § 87(2)(g)

The footage possessed by the investigation does not show PO Stalikas's vehicle ram into § 87(2)(b)'s vehicle. All the officers interviewed for the investigation denied that PO Stalikas rammed § 87(2)(b)'s car. Instead, § 87(2)(b) rammed both minivans, apparently to escape. The officers' testimony is consistent with the video evidence. For instance, PO Stalikas's RMP abruptly lurching backwards, as seen in the CCTV footage, is consistent with being rammed. Before this point, PO Stalikas apparently applied his brakes and stopped. § 87(2)(b)'s ramming the vehicles is consistent, furthermore, with his general reckless disregard for the safety and property of others -- as reflected for example in his accelerating after Sgt. Busch opened his passenger door. § 87(2)(g)

As stated above, the investigation credits the officers' testimony that § 87(2)(b) rammed both police vehicles. (According to Detective Capellan, § 87(2)(b) nearly struck Detective Cruver.) And simply in accelerating after Sgt. Busch opened the door to his vehicle, § 87(2)(b) demonstrated a disregard for officers' safety and a willingness to flee notwithstanding the risks to others. Vehicles, as the patrol guide recognizes, can be used as lethal weapons. Many of the other factors that officers must consider weighed in favor of tasing § 87(2)(b). He was known to have an extensive criminal history, including weapons charges and violence against police officers. Wanted at the time for a shooting and other offenses, furthermore, he was known to carry a specific firearm. § 87(2)(g)

Sgt. Busch denied that he told § 87(2)(b) "I'm going to kill you." Neither PO Stalikas nor Detective Capellan heard the sergeant (or any other MOS) make this threat. § 87(2)(g)

It is undisputed that Detective Capellan used a sledgehammer to break the rear driver's side window of § 87(2)(b)'s vehicle. The officers were consistent that this was either after or while § 87(2)(b) rammed both police vehicles. It was also after § 87(2)(b) had trapped Sgt. Busch's arm in the car window. Given that § 87(2)(b) was still attempting to flee, and was using his vehicle to endanger officers, Detective Capellan needed to enter the vehicle to subdue him. § 87(2)(g)

PO Stalikas and Detective Capellan were consistent that they could see § 87(2)(b) reaching for a firearm on the floor behind the passenger's seat. Sgt. Busch saw § 87(2)(b)

reaching toward this area, though he did not see the firearm. Meanwhile, § 87(2)(b) had trapped Sgt. Busch's arm, and was possibly continuing to operate his vehicle. In deploying his taser against § 87(2)(b) both to prevent flight and to neutralize active aggression, PO Stalikas acted § 87(2)(g)

Allegation G: Force – An officer used physical force against § 87(2)(b)

Allegation H: Force – An officer used a non-lethal restraining device (taser) against § 87(2)(b)

Allegation I: Discourtesy – Detective Gary Capellan spoke discourteously to § 87(2)(b)

Allegation J: Force – Detective Joseph Spina used physical force against § 87(2)(b)

Allegation K: Abuse of Authority – Detective Gary Capellan threatened § 87(2)(b) with the use of force

According to all the officers, a crowd began to form near the scene of the arrest; some people were on the sidewalk and others on the roadway. Detective Capellan testified that a young man came within about five feet of him. Detective Capellan was not aware at the time of his interview that the young man was § 87(2)(b)'s half-brother, § 87(2)(b). At 01:28 in CCTV footage [BR 3], § 87(2)(b) is seen running toward the scene of the arrest. § 87(2)(b) stated during his CCRB interview [BR 12] that as he got close, he saw two officers kneeling on § 87(2)(b)'s back, and another officer using his taser in drive-stun mode against § 87(2)(b). An officer then "came out of nowhere" and told § 87(2)(b) to move back. § 87(2)(b) stepped back by a few feet, but the officer continued walking toward him and then pushed him. The officer asked "do you want to get tased?" and pointed his taser at § 87(2)(b).

Sgt. Busch, Detective Capellan, and PO Stalikas all denied that any officers used force against § 87(2)(b) including tasing him, after removing him from his vehicle. Detective Capellan specifically denied that any officer knelt on or otherwise applied pressure to § 87(2)(b)'s back. None of the police documentation related to the incident notes any use of force against § 87(2)(b) following Sgt. Busch and PO Stalikas' initial taser deployments. According to the TRI Interaction report for Sgt. Busch's taser deployment, he never used his taser in drive stun mode, and he did not use any "additional cartridges." Sgt. Busch testified that his arm was still trapped as his partners took § 87(2)(b) into custody. However, the data sheet for Sgt. Busch's taser [BR 13] shows that he deployed it twice, first at 10:06:52 and again at 10:07:08. It is not known what explains the second triggering event.

At 00:08 in cellphone footage of the incident [BR 2] – at which point officers are apparently still taking § 87(2)(b) into custody on the road, next to the driver's side of his vehicle – § 87(2)(b) yells out something unintelligible. At 00:11, a detective, apparently Detective Spina, tells § 87(2)(b) to "stay over there." At 00:13, the same detective yells "stay back. I'm telling you to stay back." § 87(2)(b) continues approaching, however. When he enters the frame, at 00:15, he is no longer running. He walks along the side of the road and stops just behind the black police minivan. He is at least twenty feet away from § 87(2)(b) and the officers. Detective Spina begins walking toward § 87(2)(b) who yells "suck my dick bitch ass." In the background, an officer, whose voice is identical with that of Detective Capellan, says "get the fuck out of here" twice. Detective Capellan did not recall using any profanity toward § 87(2)(b). He noted, though, that § 87(2)(b)'s encroachment on the officers was concerning, especially because § 87(2)(b)'s firearm remained unsecured inside of his vehicle. At 00:24, Detective Spina pushes § 87(2)(b) from the edge of the roadway onto the sidewalk. The push does not appear very forceful, but it propels § 87(2)(b) back by a few feet. Detective Spina again orders § 87(2)(b) to stay on the sidewalk. (This interaction is captured, without audio, between 01:30 and 01:40 in the CCTV footage.) § 87(2)(b) remains on the sidewalk but walks closer to his brother and the officers surrounding him. He tells the officers repeatedly to "suck [his] dick." At 00:38, Detective Capellan says "get him the fuck out of here," apparently referring to § 87(2)(b) as his partners escort § 87(2)(b).

§ 87(2)(b) to an RMP. (This is not pleaded as a discourtesy, as Detective Capellan is addressing his partners.) § 87(2)(b) still on the sidewalk, then takes a few steps closer toward Detective Capellan, who is on the roadway next to § 87(2)(b)'s vehicle. § 87(2)(b) yells "bitch ass nigga." Detective Capellan faces § 87(2)(b) and asks him for his name. § 87(2)(b) replies "suck my dick, what?" Detective Capellan removes his taser, then steps toward § 87(2)(b). § 87(2)(b) asks him, "why you gonna shoot?" Detective Capellan, at 00:47, apparently says "I'm going to tase you." Detective Capellan acknowledged saying "get back; I will tase you," and stated that he pointed his taser at § 87(2)(b). The cellphone footage does not clearly show Detective Capellan pointing his taser. He may do so, for a second or less, at 00:47, at which point his left forearm and hand cannot be seen. Detective Capellan apparently then orders § 87(2)(b) to "stay" multiple times. Detective Capellan testified that § 87(2)(b) seemed to be trying to "entertain" the officers, so that they would not arrest § 87(2)(b). He committed obstruction of governmental administration (OGA), furthermore, in approaching the scene of the arrest, despite multiple commands to get back, and before the officers had secured § 87(2)(b)'s vehicle (and the firearm inside).

§ 87(2)(b) stopped approaching the scene of the arrest while he was still over twenty feet from the officers and his brother. Almost immediately, Detective Spina – a larger individual – approached § 87(2)(b) which would have obstructed his line of sight. It is very unlikely, then, that § 87(2)(b) had a vantage from which he could have seen two officers kneeling on § 87(2)(b)'s back. Detective Capellan and Officer Stalikas, who took § 87(2)(b) into custody, denied that they used any force against § 87(2)(b) after removing him from this vehicle. Detective Capellan specifically denied that any officer kneeled, or otherwise applied pressure, on § 87(2)(b)'s back. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Sgt. Busch, Detective Capellan, and Officer Stalikas all denied that any officer tased § 87(2)(b) after he was removed from the vehicle. According to Sgt. Busch, he was only freed from § 87(2)(b)'s window after his partners had taken § 87(2)(b) into custody. There is no evidence against the officers' testimony, except the data sheet for Sgt. Busch's taser, which shows that he deployed it a second time, about 16 seconds after the first triggering. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Under DAO-DCT case number 2018-18951, officers generally must use courtesy and civility in their interactions with civilians. However, an officer's use of profanity will be excused during stressful or chaotic circumstances, or during violent encounters. DAO-DCT case 2018-18951 [BR 14].

Video shows that Detective Capellan said "get the fuck out of here" twice, apparently addressing § 87(2)(b). Although officers must usually use courtesy and civility in their encounters with civilians, the use of profanity may be excused under stressful or violent circumstances. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Under Patrol Guide 221.01, officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. When appropriate, officers must use de-escalation techniques to safely gain voluntary compliance from a subject. In situations in which this is not feasible, officers must use only the reasonable force necessary to gain control or custody of a subject NYPD Patrol Guide 221.01 [BR 15].

Given that § 87(2)(b) continued approaching after Detective Spina had ordered him to stay back, the detective had reason to believe that § 87(2)(b) meant to encroach on the scene of the arrest. As Detective Spina walked toward him, § 87(2)(b) was belligerent, using profanity and asking “what?” aggressively. Both because § 87(2)(b) appeared potentially aggressive, and because he was not willfully compliant with officers’ orders to stay away, Detective Spina § 87(2)(g) pushing him onto the sidewalk. § 87(2)(g)

It is undisputed that Detective Capellan both pointed his taser at § 87(2)(b) and said something to the effect of “I am going to tase you.” In the moments before, § 87(2)(b) was yelling profanities at the officers, and seemed belligerent; indeed, as argued above, it was reasonable for Detective Spina to initially believe that he might encroach on the arrest scene. However, § 87(2)(b) remained on the sidewalk after Detective Spina instructed him to, and he stayed at least six feet away from officers. The video evidence shows no indications that he was going to interfere with his brother’s arrest or encroach on the arrest scene. Nor were there any indications that he posed a danger to any officers. Officers may only use their tasers against subjects who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other(s) present. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the third CCRB complaint to which § 87(2)(b) has been a party, and in which he’s been named as a victim [BR 16].
 - Case 201108166 involved an allegation of discourtesy and an allegation of offensive language. It was closed as complainant uncooperative.
 - Case 201114702 involved an allegation of discourtesy and an allegation of threat of force. The allegations were closed, respectively, as unsubstantiated and exonerated.
- This is the first complaint to which § 87(2)(b) has been a party, and in which he’s been named as a victim [BR 17]
- Police Officer James Stalikas has been a member of service for six years, over which time he has been the subject of eight cases and twenty allegations, four of which have been substantiated.
 - Case 201904998 involved a substantiated allegation of discourtesy – word, which resulted in command level instructions.
 - § 87(2)(g)
- Detective Gary Capellan has been a member of service for ten years, over which time he has been the subject of ten cases and twenty-three allegations, two of which have been substantiated.
 - Case 201503326 involved substantiated allegations of physical force and property damaged. The board recommend command discipline – A, and the NYPD concurred.
 - Detective Capellan’s summary of employment history is attached to IA 138 [BR 21].
- Detective Joseph Spina has been a member of service for nine years, over which time he has been the subject of five cases and fifteen allegations, seven of which have been

substantiated.

- Case 201310805 involved substantiated allegations of frisk, retaliatory summons, threat of arrest, and vehicle search. The board recommendation is not listed. The NYPD did not impose any disciplinary action.
 - Case 201905408 involved substantiated allegations of stop and failure to provide RTKA card. The board recommended command discipline – A. the NYPD disposition and penalty are not listed.
 - Case 202002331 involved a substantiated allegation of discourtesy – word. The board recommended command discipline – A. The NYPD disposition and penalty are not listed.
- Sergeant William Busch has been a member of service for fourteen years, over which time he has been the subject of one case and four allegations, none of which were substantiated.

Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation
- § 87(2)(b) [REDACTED]
- There are no notices of claim related to this incident [BR 20].

Squad: 7

Investigator:	<u>Will Rasenberger</u>	<u>Inv. Will Rasenberger</u>	<u>04/28/2022</u>
	Signature	Print Title & Name	Date

Squad Leader: _____

Signature	Manager Vanessa Rosen	May 9, 2022
_____	_____	_____
	Print Title & Name	Date

Reviewer: _____

Signature	Print Title & Name	Date
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